

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CLAUDIA GUTIERREZ AGUIRRE,

Petitioner,

**MEMORANDUM &
ORDER**

08 CV 2613 (SJ)(SMG)

-against-

MILTON ESPINOZA CALLE,

Defendant.
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A P P E A R A N C E S

CHADBOURNE & PARKE LLP

30 Rockefeller Plaza

New York, NY 10112

By: Oliver John Armas, Esq.

Emily Abrahams

Attorneys for Petitioner

JOHNSON, Senior District Judge:

The above-captioned action was brought by Petitioner Claudia Gutierrez Aguirre ("Petitioner"), pursuant to the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention"), T.I.A.S. No. 11,670 at 1, *reprinted in* 51 Fed. Reg. 10493 (1986), which was implemented by the International Child Abduction Remedies Act ("ICARA"), 42 U.S.C. §§ 11601 *et seq.*

BACKGROUND

In her Verified Petition, filed on July 1, 2008, Petitioner alleges that her seven-year-old daughter, who resided in Colombia with Petitioner from the time she was four months old, was illegally retained in the United States by the child's biological father, Mr. Calle ('Respondent'), following an authorized, 30-day custodial visit to Respondent's home in Elmhurst, New York. See Pet. ¶¶ 10, 24, 27. Petitioner alleges that this was only the second time Respondent had ever requested a visit with his daughter, the first taking place in 2005 and lasting a mere 20 days. Id. at ¶ 24. Petitioner further alleges that, as the parent with sole custody of her daughter under Colombia law, she has made both formal and informal attempts to have her daughter returned to her habitual residence in Colombia, including requests filed with the United States Department of State and the National Center for Missing and Exploited Children. Pet. ¶¶ 27, 30.

PROCEDURAL HISTORY

Respondent never responded to the Verified Complaint and failed to appear before the Court in connection with this case. On August 26, 2008, Petitioner filed a Motion for Entry of Default and Notation of Default, in response to which a Clerk's Entry of Default was entered on that same day. The following day, the matter was referred to Magistrate Judge Steven M. Gold for an inquest as to damages and a report and recommendation under the Notation of Default.

On September 9, 2008, Magistrate Judge Gold issued a Report and Recommendation (the 'Report'), recommending that this Court enter a judgment in favor

of Petitioner“and that an order be entered directing the prompt return of Carolina Gutierrez Aguirre to her habitual residence”in Colombia. Report at 9. Moreover, Magistrate Judge Gold recommended that Respondent be held liable for Petitioner’s attorney’s fees and costs, pursuant to Article 26 of the Hague Convention and 42 U.S.C. § 11607. Id.

DISCUSSION

A district court judge may designate a magistrate to hear and determine certain motions pending before the Court and to submit to the Court proposed findings of fact and a recommendation as to the disposition of the motion. See 28 U.S.C. § 636(b)(1). Within ten days of service of the recommendation, any party may file written objections to the magistrate's report. See id. Upon *de novo* review of those portions of the record to which objections were made, the district court judge may affirm or reject the recommendations. See id.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. See Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections may waive the right to appeal this Court’s Order. See 28 U.S.C. § 636(b)(1); Small v. Sec’y of Health and Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

In this case, objections to Magistrate Judge Gold's Report were due within 10 business days of receipt of the decision, or at the latest by September 23, 2008. No objections to the Report were filed with this Court.

CONCLUSION

Upon review of the recommendations and the underlying and unchallenged facts of the case, this Court sees no basis upon which to disturb the well-reasoned findings made by Magistrate Judge Gold. Therefore, the Court adopts and affirms the Report in its entirety. Respondent Milton Espinoza Calle is hereby ordered immediately to return his daughter, Carolina Gutierrez Aguirre, to her habitual residence in Colombia and into the custody of her mother, Petitioner Claudia Gutierrez Aguirre. This matter will be referred back to Magistrate Judge Gold for an inquest with respect to the amount of attorney's fees and costs for which Respondent will be responsible.

SO ORDERED.

Dated: Brooklyn, New York s/b Judge Johnson
September 30, 2008 U.S.D.J.